

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NANCY J. BEARDSLEY and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Sarasota, FL

*Docket No. 02-781; Submitted on the Record;
Issued September 4, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration without merit review of the claim.

On September 7, 2000 appellant, then a 51-year-old modified city carrier, filed a traumatic injury claim (Form CA-1) alleging that she had a panic attack, chest pain, upset stomach, crying, shortness of breath, uncontrollable shaking and viselike headache due to her supervisor, Jennifer Jackson, threatening and insulting her. Appellant also alleged that due to this exchange she was afraid of Ms. Jackson.

In a statement of threat/assault dated September 7, 2000, Ms. Jackson, appellant's supervisor related that she and appellant met to discuss her work restrictions and her returning to delivering/carrying mail. Appellant allegedly threatened Ms. Jackson by stating "that if I sent her out to deliver mail, it would be my 'funeral'" and that she "was taken aback by this comment and said to her 'Excuse me, what did you say?' and she replied with 'if you send me out to deliver mail it will be your (mine) funeral.'"

In a September 13, 2000 attending physician's report, Dr. Barbara P. Srur, an attending Board-certified psychiatrist, diagnosed depression and checked "yes" that it was employment related.

In a letter dated October 7, 2000, the Office informed appellant that the evidence was insufficient to support her claim and advised her as to the type of factual and medical evidence necessary to support her claim.

In a statement dated October 15, 2000, appellant related that on September 7, 2000 that Ms. Jackson harassed and threatened her during a discussion of appellant's return to work and her work restrictions. Appellant acknowledged stating that it would be Ms. Jackson's funeral if appellant was required to deliver mail and Ms. Jackson took "advantage of her poor choice of words." In ending the discussion, appellant stated that Ms. Jackson stated "'Oh just get the hell

out of here' I said 'Do you mean go home?' She said 'No, when I [a]m done with you, you w[ill] n[o]t be coming back once you leave.'" It was at this point that appellant stated that she started to cry and have a panic attack.

By decision dated November 14, 2000, the Office denied appellant's claim. In support of this decision, the Office found that appellant failed to establish any compensable factors.

On November 21, 2000 appellant requested reconsideration and submitted evidence in support of her request.

In a November 9, 2000 report, Dr. Srur noted that she had been treating appellant since August 16, 2000 for depression. Dr. Srur noted, in a report dated September 13, 2000 that the incident involved a misinterpretation of her release of appellant to return to work by appellant's supervisor and that the supervisor missed her reference to Dr. Storey for physical restrictions. The physician noted that appellant had no past history of aggression at work. On September 25, 2000 Dr. Srur indicated that appellant "was very distraught at the turn of events" and "She had repeated episodes of chest pain."

By decision dated March 1, 2001, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

On November 1, 2001 appellant's representative requested reconsideration and submitted an October 15, 2000 narrative statement by appellant and an October 16, 2001 report by Dr. Albert A. Nestor, an attending osteopath.

In his October 16, 2001 report, Dr. Nestor indicated that he "was aware of the incident on September 7, 2000" and that due to this incident appellant went to the emergency room for complaints of chest pain. He noted that he had "read the narrative in which Ms. Jackson said 'to get the hell out of here. And when I am done with you you will not be coming back,'" and he opined that this statement certainly contributed "to the patient's chest pain, anxiety, elevation of bloodpressure (sic) and the symptoms for which she had to be hospitalized resulting in her ER physician consultation with a cardiologist."

By decision dated January 10, 2002, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

With respect to the Board's jurisdiction to review final decisions of the Office, it is well established that an appeal must be filed no later than one year from the date of the Office's final decision.¹ As appellant filed her appeal on February 19, 2002, the only decision over which the Board has jurisdiction on this appeal is the January 10, 2002 decision, denying her request for reconsideration.²

The Board finds that the Office properly denied appellant's request for reconsideration.

¹ See 20 C.F.R. § 501.3(d).

² The Board notes that appellant's representative has not requested review of the March 1, 2001 nonmerit decision which also denied appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ the Office's regulations provides that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or interpreted a specific point of law, or (2) advancing a relevant legal argument not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁵

In this case, appellant's allegations included that she was treated unfairly when Ms. Jackson discussed her work tolerances and the possibility of her returning to delivering mail, that she was subject to harassment and intimidation. The Office denied the claim on the grounds that compensable work factors had not been established as factual or arises in the performance of duty. The Board finds that the evidence submitted after the November 14, 2000 merit decision, however, does not constitute new and relevant evidence.

Appellant submitted a report dated October 15, 2001 from Dr. Nestor but his report restates appellant's allegations without providing probative evidence with respect to compensability. The Board notes that, until a compensable work factor is substantiated, a medical issue is not presented.⁶ Appellant also submitted her October 16, 2000 statement detailing her allegations. As this had been previously considered by the Office in its November 14, 2000 merit decision, it is not new and relevant evidence.

The Board finds that appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, nor did she submit new and relevant evidence with respect to compensable work factors. Accordingly, the Office properly refused to reopen the claim for merit review.

³ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.608(b); *see also* *Norman W. Hanson*, 45 ECAB 430 (1994).

⁶ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

The January 10, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 4, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member